

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DIVISION I

CACR05-1107

March 15, 2006

CRAIG ANTHONY HALL
APPELLANT

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[CR 04-670]

V.

HON. EDWARD T. SMITHERMAN,
CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

LARRY D. VAUGHT, Judge

Appellant Craig Anthony Hall pled guilty to one count of rape and was sentenced to forty years' imprisonment. He argues on appeal that, during the sentencing phase of the trial, the trial court erred in preventing Hall from cross examining the victim about her alleged marijuana use and in allowing the victim to testify that Hall raped her prior to the time period alleged in the information. We disagree and affirm.

Before hearing evidence at the sentencing phase of Hall's trial, the State filed a motion in limine to prevent Hall from questioning the victim, a fifteen-year-old girl, about her alleged marijuana use approximately one week before she reported the rape. The State argued that because Hall had admitted to the rape of a minor, whether the victim had used marijuana was irrelevant to the sentencing. The trial court granted the State's motion.

Hall then objected to the State's intention to question the victim regarding sexual encounters between her and Hall that occurred prior to the dates alleged in the information. The State countered that it had charged Hall with one count of rape for a course of conduct rather than separate counts, and therefore, the victim could testify regarding the first rape

when she was ten years old (an event that occurred prior to the dates listed in the information) up through the last assault when she was fourteen. The court overruled Hall's objection.

During the penalty phase, the victim testified that after Hall married her mother, he began raping her. She described the first encounter explicitly as sexual intercourse. She stated that he continued to have sexual intercourse with her once or twice every few months until she was fourteen. Hall forced her to perform oral sex on him and threatened to take away her cellular phone or compact-disc player if she did not comply.

We review the decision of the trial court to admit evidence during the sentencing phase under an abuse of discretion standard. *Buckley v. State*, 349 Ark. 53, 76 S.W.3d 825 (2002). All relevant evidence on the question of sentencing may be considered by the sentencing body. *Marshall v. State*, 342 Ark. 172, 27 S.W.3d 392 (2000). The admissibility of proof in the penalty phase of a jury trial is governed by the Arkansas Rules of Evidence; however, pursuant to Ark. Code Ann. § 16-97-103 (Repl. 2006) certain evidence is admissible at sentencing that would not have been admissible at the guilt phase of the trial. *Helms v. State*, --- Ark. App. ----, --- S.W.3d ---- (June 22, 2005). Section 16-97-103 allows for victim impact evidence or statements, relevant character evidence, and evidence of aggravating or mitigating circumstances to be presented during the penalty phase.

For his first point on appeal, Hall argues that in not allowing him to question the victim about her alleged marijuana use, the court denied him his fundamental right to cross examine witnesses. He maintains that the victim was "able to present herself as totally without human flaw," and that if the jury had been aware of her alleged drug use, it might have assessed Hall a lesser sentence. We are satisfied that the trial court did not err. According to Ark. Code Ann. § 5-14-103 (Repl. 2006), the State need only prove Hall

engaged in sexual intercourse with a person under the age of fourteen to establish guilt. Hall admitted he had sex with the victim while she was under the age of fourteen. Therefore, it was of no relevance that she may have abused drugs after the rape.

Next, Hall argues that the trial court erred in allowing the victim to testify during sentencing regarding sexual encounters she had with Hall prior to the time period alleged in the State's information. We believe that the victim's testimony was properly admitted during the sentencing phase under § 16-97-103. Additionally, although the State charged only sexual assaults occurring in a two-year period in the information, the course of conduct included several sexual encounters prior to those two years. It was not reversible error for the court to allow the victim to tell her story from the beginning. The rapes that occurred prior to the dates in the information were aggravating circumstances properly before the jury during sentencing.

Even if we held that the trial court erred on either of the two points, Hall can present no prejudice because he was sentenced to a lighter punishment than the maximum. Based on his crime, he was sentenced to forty years in prison, but he could have been sentenced to life. A defendant who has received a sentence within the statutory range short of the maximum sentence cannot show prejudice from the sentence itself. *Buckley*, 349 Ark. at 64, 76 S.W.3d at 832.

Affirmed.

HART and ROAF, JJ., agree.